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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/679,128
Filing Date: October 03, 2003
Appellant(s): LUMPKIN, WAYNE R.

Thomas D. Bratschun
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/12/2010 appealing from the Office action mailed 9/3/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-17 stand rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,186,027	Nielsen	2-2001
1,870,112	Hand et. al.	8-1932
2,287,343	Duda	6-1942
5,584,210	Gelbein	12-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1, 2-4, 10, 6-8, 14-16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (USP-6,186,027) in view of Hand et al. (USP-1,870,112).

Regarding claim 1: Nielsen discloses a clamp structure comprising a(n):

- First arm (36,42A) having a distal end (42A) defining a first threaded through bore (42A, C3 L25-28)
- Second arm (36,42B) having a distal end (42B) defining a second threaded through bore (Figure 3, C3 L25-28), wherein the first threaded bore and the second threaded bore are essentially coaxial and essentially the same inner diameter (Fig. 3)
- Screw (40) comprising a head and a shank (Fig. 3), the head being at one end of the shank and the shank having a threaded portion at a second end opposite the first end, the screw being configured for selective insertion in one of the first and second threaded through bores (the screw is capable of being screwed into both threaded bores) so that with a threaded engagement between the threaded portion of the shank and either the first threaded through bore (42A) of the first arm (36, 42A) or the second threaded bore (42B) of the second arm (36, 42B) and the head abutting the other of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores (Fig. 3)

While Nielsen does indeed disclose a first and second threaded through bore (bores in 42A, and 42B) and appears to show a clearance portion (non-threaded portion of the shaft), Nielsen does not explicitly disclose a clearance portion as defined by Applicant (a portion that is capable of clearing a threaded bore).

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7) this is sized to be freely received in a bore without contacting the wall (C2 L70-75), in order to achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the screw of Nielsen for the screw disclosed by Hand, since the simple substitution of one known element for another to obtain predictable results requires only routine skill in the art.

Regarding claims 2 and 3: Nielsen in view of Hand discloses all of the claim limitations as described above.

Nielson does not explicitly disclose a clearance portion having an outer diameter sized to clear the first (42A) and second (42B) threaded bores, and the clearance portion having a length at least equal to the axial length of each threaded bore.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance

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portion has an outer diameter sized to clear a through bore (5) and having a length at least equal to (as well as exceeds, Fig. 2) the axial length of a threaded through bore (4), in order to achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the screw of Nielsen for the screw disclosed by Hand, since the simple substitution of one known element for another to obtain predictable results requires only routine skill in the art.

Regarding claim 4: Nielsen further discloses a clamp structure wherein each of the first and second arms have a proximal end (34) attached to a bicycle component (8).

Regarding claim 6: Nielsen discloses a method of attaching a clamp to a frame comprising:

- Providing a frame (38)
- Providing a symmetric clamp structure (36, 42A, 42B) comprising a first arm (36, 42A) having a distal end (42A) defining a first threaded bore (C3 L25-28), a second arm (36, 42B) having a distal end (42B) defining a second threaded bore (C3 L25) wherein the first threaded bore (42A) and the second threaded bore (42B) are

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essentially coaxial (C3 L22) and have essentially the same size and pitch threading (Fig. 3)

- Providing a screw (40) comprising a head and a shank, the head being at one end of the shank and a threaded portion being at a second end of the shank opposite the first end (Fig. 3), the threaded portion being sized to threadably engage both the first and second threaded bores
- Engaging the screw with the clamp by selectively inserting the screw into one of the first and second threaded bores (screw 40 is capable of being screwed into both threaded bores) and screwing the threaded portion into a threaded engagement with the second or first threaded bore, such that the head abuts the arm opposite the threaded engagement and the clearance portion clears the threads of the threaded bore opposite the threaded engagement
- Placing the clamp over the frame so that the frame is received between the first and second arms of the clamp (Fig. 3)
- Tightening the screw thereby driving the distal ends of the first and second arms toward each other, thereby attaching the clamp to the frame (C3 L23-25)

While Nielsen does indeed disclose a first and second threaded through bore (bores in 42A, and 42B) and appears to show a clearance portion (non-threaded portion of the shaft), Nielsen does not explicitly disclose a clearance

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portion as defined by Applicant (a portion that is capable of clearing a threaded bore).

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7) that is sized to be freely received in a bore without contacting the wall (C2 L70-75), in order to achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the screw of Nielsen for the screw disclosed by Hand, since the simple substitution of one known element for another to obtain predictable results requires only routine skill in the art.

Regarding claims 7 and 8: Nielsen further discloses the frame is a tubular bicycle handlebar/frame (38, handlebar is part of the frame).

Regarding claim 10: Nielsen discloses a method of manufacturing a symmetrical clamp structure comprising:

- Providing a clamp body (36) having a first arm (36, 42A) having a distal end (42A) and a second arm (36, 42B) having a distal end with the distal end of the first arm and the distal end of the second arm being substantially adjacent to each other and defining a gap between the arms (Fig. 3)
- Forming identical coaxial cylindrical threaded bores (42A, 42B; C3 L21-28) through the distal ends of the first and second arms

- Providing a screw (40) having a head at one end and a threaded shank extending from the head to an opposite end with the threaded shank being sized to threadably engage the threaded bores through the distal ends of the first and second arms (Fig. 3)
- Leaving a portion of the shank opposite the head threaded (Fig. 3)
- Assembling the clamp by selectively threadably engaging the screw with either of the first and second threaded bores (screw 40 is capable of being screwed both threaded bores) such that the head abuts the arm opposite the threaded engagement and the clearance portion clears the threads of the threaded bore opposite the threaded engagement (Fig. 3)

While Nielsen does indeed disclose a first and second threaded through bore (bores in 42A, and 42B) having a predetermined length and appears to show a clearance portion (non-threaded portion of the shaft), Nielsen does not explicitly disclose forming a clearance portion as defined by Applicant (a portion that is capable of clearing a threaded bore), each threaded bore having a length less than a select length and a clearance portion of the shank of the select length.

Hand teaches a clamp having comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), a threaded bore (4) less than a select length (length of 7) and a clearance portion (7) of the select length (Fig. 2)

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for the purpose of achieving the predictable result of forcing the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Nielson to have a clearance portion formed on the shank, each threaded bore having a length less than a select length and a clearance portion of the shank of the select length, as taught by Hand, for the purpose of achieving the predictable result of forcing the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Regarding claims 14 and 15: Nielson discloses the clearance portion being non-threaded (Fig. 3).

Regarding claim 16: Hand further discloses the clearance portion (7) being non-threaded (Fig. 2).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (USP-6,186,027) in view of in view of Hand et al. (USP-1,870,112) further in view of Duda (USP-2,287,343).

Regarding claim 9: While Nielson in view of Hand does indeed disclose a screw that is capable of threaded engagement with either the first and second threaded through bore, Nielson does not explicitly disclose removing the screw from threaded engagement with either the first and second arms and engaging and tightening the screw in an opposite orientation such that the screw is threadably engaged with the other arm.

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Duda teaches a clamping system having a screw (9) that can be removed from a threaded bore (8) and screwed in an opposite orientation (C2 L32-43) for the purpose of facilitating assembly and to achieve the predictable result of tightening the clamp.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have removed the screw of Nielson from threaded engagement with either the first and second arms and engaging and tightening the screw in an opposite orientation such that the screw is threadably engaged with the other arm, as taught by Duda, for the purpose of facilitating assembly and to achieve the predictable result of tightening the clamp.

Claims 1, 4, 5, 11-13, and 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelbein (USP-5584210) in view of Nielsen (USP-6,186,027) further in view of Hand et al. (USP-1,870,112).

Regarding claim 1: Gelbein discloses a symmetric clamp structure comprising a(n):

- First arm (right side of 32) having a distal end (54) defining a first threaded through bore (56, C3 L26)
- Second arm (left side of 32) having a distal end (54) defining a second through bore (56)
- Screw (58) comprising a head and a shank, the head being at one end of the shank and the shank having a threaded portion (58) at a second end opposite the first end

Gelbein discloses all of the claimed subject matter as described above.

Gelbein does not disclose a second threaded through bore, wherein the first threaded through bore and the second threaded through bore are essentially coaxial and essentially the same inner diameter, and a screw having a clearance portion between the threaded portion and the head, the screw being configured for selective insertion in one of the first and second threaded through bores so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores.

Nielsen teaches a clamp (36, 42A, 42B) comprising a first threaded bore (42A, C3 L25-28) and a second threaded bore (42B), wherein the first threaded bore and the second threaded bore are essentially coaxial (C3 L22) and essentially the same inner diameter (Fig. 3), and a screw (40) having a clearance portion (non-threaded portion of the screw) between the threaded portion and the head (Fig. 3), the screw being configured for selective insertion in one of the first and second threaded through bores so that with a threaded engagement between the threaded portion of the shank and one of the first and second threaded bores and the head abutting one of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded bores (Fig. 3), to achieve the predictable result of drawing the lugs together so as to compress the tubular member about the

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handlebar thereby locking the handlebar in place (C3 L21-25) and for positively and securely locking the clamp (C1 L65-66).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have employed in the device of Gelbein a second threaded through bore, wherein the first threaded through bore and the second threaded through bore are essentially coaxial and essentially the same inner diameter, and a screw having a clearance portion between the threaded portion and the head, the screw being configured for selective insertion in one of the first and second threaded through bores so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first and second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores, as taught by Nielsen, for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

While it appears Nielsen discloses a clearance portion (non-threaded portion of the shaft), Nielsen does not explicitly disclose a clearance portion as defined by Applicant (a portion that is capable of clearing a threaded bore).

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7) this is sized to be freely received in a bore without contacting the wall (C2 L70-75), in order to

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achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the screw in the device of Gelbein in view of Nielsen for the screw disclosed by Hand, since the simple substitution of one known element for another to obtain predictable results requires only routine skill in the art.

Regarding claim 4: Gelbein further discloses each of the first and second arms have a proximal end (26) attached to a bicycle component (40).

Regarding claim 5: Gelbein further discloses the bicycle component (40) is a brake lever (Fig. 3).

Regarding claim 11: Gelbein discloses a bicycle brake lever comprising:

- A housing (30)
- A lever (40) pivotably attached to the housing
- A clamp (50) attached to the housing
- First (right side of 32) and second (left side of 32) arms configured to receive a bicycle handlebar (12) axially therebetween, each of the first and second arms having a distal end (54), the distal ends having a space therebetween (Figs. 1-3), the first arm further having a first threaded through bore (56) at its distal end and the

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second arm further having a second through bore (56) at its distal end

- A screw (58) comprising a head and a shank, the head being at one end and the shank having a threaded portion at a second end opposite the first end (Fig. 3)

Gelbein does not disclose a second threaded through bore, the first and second threaded through bores being essentially coaxial and essentially the same inner diameter, a screw having a clearance portion between the threaded portion and the head, the screw being configured for selective insertion in one of the first and second threaded through bores so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores, such that there is no threaded engagement between the threaded portion of the shank and the other of the first and second threaded through bores.

Nielsen teaches clamp (36) having a first threaded through bore (42A, C3 L25-28), a second threaded through bore (42B), the first and second threaded through bores being essentially coaxial and essentially the same inner diameter (Fig. 3), a screw (40) having a clearance portion between the threaded portion and the head (Fig. 3), the screw being configured for selective insertion in one of

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the first and second threaded through bores (screw 40 is capable of being screwed into both threaded bores) so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm (36, 42A) or the second threaded through bore of the second arm (36, 42B) and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores (Fig. 3) for the purpose of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have employed in the device of Gelbein a second threaded through bore, the first and second threaded through bores being essentially coaxial and essentially the same inner diameter, a screw having a clearance portion between the threaded portion and the head, the screw being configured for selective insertion in one of the first and second threaded through bores so that with a threaded engagement between the threaded portion of the shank and either of the first threaded through bore of the first arm or the second threaded through bore of the second arm and the head abutting the other of the first or second arms opposite the threaded engagement, the clearance portion resides within the other of the first and second threaded through bores, as taught by Nielsen, to achieve the predictable result of drawing the lugs together so as to compress the tubular member about the handlebar thereby locking the handlebar

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in place (C3 L21-25), and for positively and securely locking the clamp (C1 L65-66).

Gelbein in view of Nielsen disclose all of the claimed subject matter as described above.

While Nielsen appears to disclose a clearance portion (non-threaded portion of the screw) that resides within the other of the first and second threaded through bores, Nielsen does not explicitly a clearance portion as defined by Applicant (a portion that is capable of clearing a threaded bore) and that there is no threaded engagement between the threaded portion of the shank and the other of the first and second threaded through bores.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance portion resides within the other through bore (5), such that there is no threaded engagement between the threaded portion of the shank and the through bore (5) in order to achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the screw in the device of Gelbein in view of Nielsen for the screw disclosed by Hand, since the simple substitution of one known element for another to obtain predictable result requires only routine skill in the art.

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Regarding claims 12 and 13: While Gelbein in view of Nielson does indeed disclose a clearance portion (non threaded portion) having an outer diameter sized to clear the first (42A) and second (42B) threaded bores, Nielson does not disclose the clearance portion having a length at least equal to the axial length of each threaded bore.

Hand teaches a clamping system (Fig. 2) comprising a screw having a head (9), a threaded portion (6) and a clearance portion (7), the clearance portion has an outer diameter sized to clear a through bore (5) and having a length at least equal to (as well as exceeds, Fig. 2) the axial length of a threaded through bore (4) for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Gelbein in view of Nielson such that the clearance portion has a length at least equal to (as well as exceeds) the axial length of each threaded bore, as taught by Hand, for the purpose of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87).

Regarding claim 17: Hand further discloses the clearance portion (7) being non-threaded (Fig. 2).

(10) Response to Argument

Regarding the rejection, Appellant argues that;

1. Nielsen does not show a first and second threaded through bore having essentially the same diameter (as recited in claim 1), same size and pitch threading (as recited in claim 6), and identical co-axial cylindrical threaded through bores (as recited in claim 10).

2. Nielsen in view of Hand does not disclose the screw is configured for selective insertion in one of the first and second threaded through bores.

3. There is no suggestion from the prior art to substitute the screw of Nielsen with the screw of Hand.

4. The modification of Nielsen and Hand would require substantial reconstruction or redesign of the prior art.

Regarding the first point, the examiner notes that the limitation of claim 1 contains the phrase, "essentially the same inner diameter", thus the limitation does not require the threaded bores to have exactly the same inner diameter. Additionally, Nielsen explicitly discloses that the bore in 42b is threaded and the bore in 42A may also be threaded (C3 L25-28). The Appellant assumes that the fastener would not perform the clamping function if the bore in 42A is threaded because the bores would have different diameters and would interfere with the threads of the fastener. Appellant relies on Nielsen's disclosure in column 3 lines 25-28 that the bore 42A is "sized so that screw 40 can be rotated there" to argue

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this point. In response, the examiner notes that the threaded bore in 42B is also sized such that the screw can be rotated therein, while still performing the clamping function. Thus Nielsen's disclosure does not exclude the threaded bores having the same inner diameter as argued by the Appellant. Based on Nielsen's disclosure of both bores being threaded, if the threaded bores had different diameters, the threads of the bores would not engage the threads of the screw, and the device would not function as intended by Nielsen. Therefore, Nielsen provides implicit disclosure that bore 42A may be threaded in the same manner as the threaded bore in 42B, i.e. "same size and pitch threading" (as recited in claim 6), and "identical co-axial cylindrical threaded through bores" (as recited in claim 10). Additionally, since Nielsen discloses that both bores may be threaded, a proper fastener would also be provided so as to perform the clamping function disclosed by Nielsen. Such a fastener is taught by Hand.

Regarding the second point, the examiner notes that the limitation contains the phrase "the screw is configured for selective insertion in one of the first and second threaded through bores". As broadly recited, as long as the screw is configured to be inserted in at least one of the bores, the claim limitation has been met. Additionally, since Nielsen explicitly discloses that both the bore in 42A and 42B may be threaded, the fastener is capable of being selectively inserted in either threaded bore.

Regarding the third point, Both Nielsen and Hand disclose clamping mechanisms which use a bolt or screw to clamp together two opposing arms of the clamp. Nielsen discloses that both through bores may be threaded as

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described above. Hand teaches a screw having a head (9), a threaded portion (6) and a clearance portion (7) that is sized to be freely received in a bore without contacting the wall (C2 L70-75), in order to achieve the predictable result of allowing the clearance portion to be freely received in the bore without contacting the walls and to force the arms of the clamp towards each other thus facilitating the clamping action (C2 L69-87). Thus Hand explicitly teaches that forming a screw having the claimed "clearance portion" allows the screw to be received in the bore without contacting the walls to facilitate the clamping action.

Additionally, the simple substitution of one known screw for another known screw, in order to achieve the predictable result of allowing the screw to be received in the bore without contacting the walls to facilitate the clamping action, requires only routine skill in the art.

Regarding the fourth point, the examiner disagrees that substantial redesign of the prior art is required. As described above, Nielsen explicitly discloses that both bores may be threaded. Therefore, simply threading the other bore is not a considerable redesign of Nielsen's device. Additionally, as Nielsen already discloses a threaded fastener having a head, a threaded shank and a clearance portion, substituting the screw of Hand into the device of Nielsen would not require a substantial redesign of Nielsen's device.

Appellant's arguments with respect to claim 9, and the rejection of claims 1, 4, 5, 11-13 and 17 based on Gelbein in view of Nielsen and Hand, are directed towards the same subject matter as discussed above. The rejections are maintained for the same reasons provided above.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/MATTHEW A JOHNSON/

Examiner, Art Unit 3656

Conferees:

/MJ/ Marc Jimenez TQAS TC 3600

/Richard WL Ridley/

Supervisory Patent Examiner, Art Unit 3656